McMANN v. RICHARDSON: A RESTRICTIVE DELINEATION OF THE HABEAS CORPUS REMEDY

In *McMann v. Richardson*[1] the United States Supreme Court held that a defendant who alleges that he pleaded guilty because of a prior coerced confession is not, on that basis, entitled to a hearing on the voluntariness of his guilty plea. This was an exceedingly controversial issue, and the Court's resolution promises to result in much litigation on the ramifications of the decision.

Richardson was indicted for first degree murder during April of 1963, and two attorneys were assigned to represent him. He initially pleaded not guilty. In July, Richardson withdrew his plea and pleaded guilty to murder in the second degree, specifically admitting at the time that he struck the victim with a knife. On the strength of his guilty plea, he was convicted and sentenced to a term of thirty years to life. Following the denial without a hearing of his application for collateral relief in the state courts, Richardson filed his petition for habeas corpus in the United States District Court for the Northern District of New York, alleging that his plea of guilty was induced by a coerced confession and by ineffective, court-appointed counsel. His petition was denied without a hearing, and he appealed to the Court of Appeals for the Second Circuit, including with his appellate brief a supplemental affidavit in which he alleged that he was beaten into confessing the crime, that his assigned attorney conferred with him only ten minutes prior to the day the plea of guilty was taken, that he advised his attorney that he did not want to plead guilty to something he did not do, that his attorney advised him to plead guilty to avoid the electric chair, saying that it was not the proper time to bring up the confession, and that Richardson could later explain by a writ of habeas corpus that his confession had been beaten out of him.

The Court of Appeals for the Second Circuit reversed the decision of the district court and directed that a hearing be held on the petition for habeas corpus.[2] It was the court of appeals' view that a plea of guilty is an effective waiver of pretrial irregularities only if the plea is voluntary and that a plea is not voluntary if it is the consequence of an involuntary confession.[3]

The Supreme Court granted the petition for certiorari along with two

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[1] 397 U.S. 759 (1970).

[2] United States ex. rel. Richardson v. McMann, 408 F.2d 48 (2d Cir. 1969).

[3] The decision of the second circuit was in accord with the holdings of several other circuits: United States ex. rel. Collins v. Maroney, 382 F.2d 547 (3d Cir. 1967); Jones v. Cunningham, 297 F.2d 851 (4th Cir. 1962); Smith v. Wainwright, 373 F.2d 506 (5th Cir. 1967); Carpenter v. Wainwright, 372 F.2d 940 (5th Cir. 1967); Bell v. Alabama, 367 F.2d 243 (5th Cir. 1966), *cert. denied*, 386 U.S. 916 (1967); Reed v. Henderson, 385 F.2d 995 (6th Cir. 1967); Smiley v. Wilson, 378 F.2d 144 (9th Cir. 1967); Doran v. Wilson, 369 F.2d 505 (9th Cir. 1966).

companion cases,[4] and upon hearing reversed the decision of the Court of Appeals for the Second Circuit. The applicable principles of law cited by the Supreme Court as the basis for its decision did not differ from those which guided the court of appeals.

The Supreme Court emphasized that a guilty plea is the defendant's own admission in open court that he committed the acts with which he is charged.[5] The plea is also a waiver of trial, and unless the applicable law otherwise provides,[6] a waiver of the right to contest the admissibility of any evidence the State might have offered against the defendant. Thus, the admission of guilt may not be compelled; it must be an intelligent act "done with sufficient awareness of the relevant circumstances and likely consequences."[7] If a defendant's guilty plea is not voluntary and knowing, it has been obtained in violation of due process and is therefore void.[8]

In order to obtain relief from a conviction founded on an invalidly obtained guilty plea, the habeas corpus petitioner must first obtain a hearing. In *Townsend v. Sain*[9] the Supreme Court stated the principle for determining when an evidentiary hearing must be held in a habeas corpus case:

> . . . [w]here the facts are in dispute, the federal court in habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of the trial or in a collateral proceeding. In other words a federal evidentiary hearing is required unless the state-court trier of fact has after a full hearing reliably found the relevant facts.[10]

This basic principle holds true unless a petitioner's allegations are "vague, conclusory, or palpably incredible."[11] or are "patently frivolous or false."[12]

The habeas petitioner must also carefully draft his petition for relief since the habeas statute places great emphasis on pleadings. The statute requires a petitioner to submit an application alleging ". . . the facts con-

[4] 396 U.S. 813, (1969). The companion cases were *United States ex. rel. Williams v. Follette*, 408 F.2d 658 (2d Cir. 1969) and *United States ex. rel. Dash v. Follette*, 409 F.2d 1016 (2d Cir. 1969). The grant of certiorari also included a fourth case involving another petitioner for habeas corpus, Wilbert Ross. *United States ex. rel. Ross v. McMann*, 409 F.2d 1016 (2d Cir. 1969). However, upon consideration of a subsequent suggestion of mootness by reason of Ross' death, the court of appeals' judgment was vacated and the case remanded to the District Court for the Eastern District o fNew York with directions to dismiss the petition for habeas corpus as moot. 396 U.S. 118 (1969).

[5] McCarthy v. United States, 394 U.S. 459 (1969).

[6] New York law now permits a defendant to challenge the admissability of a confession in a pretrial hearing and to appeal from an adverse ruling on the admissability of the confession even if the conviction is based on a plea of guilty. N.Y. CODE CRIM. PROC. § 813-g (McKinney Supp. 1969).

[7] Brady v. United States, 397 U.S. 742, 748; 90 S. Ct. 1463, 1469 (1970).

[8] *Supra*, note 5.

[9] 372 U.S. 293 (1963).

[10] *Id.* at 312-313.

[11] Machibroda v. United States, 368 U.S. 487, 495 (1962).

[12] Commonwealth of Pennsylvania *ex. rel.* Herman v. Claudy, 350 U.S. 116, 119 (1956).

cerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known."[13] To escape summary dismissal a petitioner must allege the particular facts which entitle him to relief;[14] mere conclusions of law are insufficient.[15]

Applying the foregoing body of law, the court of appeals decided that Richardson was entitled to a hearing on his habeas corpus petition in order to determine whether or not his confession was indeed obtained illegally and whether or not the coerced confession infected his guilty plea so as to prevent it from being truly voluntary. The court reasoned that *Townsend v. Sain* was applicable, since no state-court trier of fact had found the relevant facts alleged by Richardson.[16] Furthermore, Richardson's allegations were found to be sufficient concerning the manner in which the confession was coerced and the connection between the confession and the plea. The court was careful, however, to point out that:

> The existence or threatened use of a coerced confession may not itself render the guilty plea involuntary. A defendant who has a basis for claiming that his confession was coerced may nevertheless elect to forego that claim and to plead guilty—whether because of 'his own knowledge of his guilt and a desire to take his medicine,' *Doran v. Wilson*, 369 F.2d 505, 507 (9th Cir. 1966); because 'he also knows that other admissible evidence will establish his guilt overwhelmingly,' *White v. Pepersack*, 352 F.2d 470, 472 (4th Cir. 1965); because he prefers to plead guilty to a lesser charge rather than run the risk of conviction on a more serious charge; or because for some other reason he determines that it is in his best interest to plead guilty.[17]

In order to determine the real reason for Richardson's guilty plea, and therefore its voluntariness, the court ordered a hearing. In doing so, the court also noted that the fact that the petitioner was represented by counsel and that he denied the existence of coercion or promises when tendering this plea were not necessarily conclusive on the question of whether the plea was voluntary. While these factors were considered relevant, the court stated that there may well be situations in which other matters which are outside the record must be considered in making that determination.[18] For instance, the ineffective assistance of counsel would be a matter outside the record which may infect the voluntariness of the plea.[19]

The Supreme Court reversed the decision of the second circuit stating:

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[13] 28 U.S.C. § 2242 (1964).

[14] If the petition shows on its face that the petitioner is not entitled to relief, the court can dismiss summarily. 28 U.S.C. § 2243, 2255 (1964).

[15] Lester v. Wilson, 363 F.2d 824 (9th Cir. 1966), *cert. denied*, 385 U.S. 995 (1966).

[16] United States *ex. rel.* Richardson v. McMann, 408 F.2d 48, 51 (2d Cir. 1969).

[17] *Id.* at 53.

[18] *Id.* at 52-53.

[19] Smith v. Wainwright, 373 F.2d 506 (5th Cir. 1967).

> The core of the Court of Appeals' holding is the proposition that if in a collateral proceeding a guilty plea is shown to have been triggered by a coerced confession—if there would have been no plea had there been no confession—the plea is vulnerable at least in cases coming from New York where the guilty plea was taken prior to *Jackson v. Denno, supra*[20] We are unable to agree with the Court of Appeals on this proposition. . . .
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> The issue on which we differ with the Court of Appeals arises in those situations involving the counseled defendant who allegedly would put the State to its proof if there was a substantial enough chance of acquittal, who would do so except for a prior confession that might be offered against him, and who because of the confession decided to plead guilty to save himself the expense and agony of a trial and perhaps also to minimize the penalty that might be imposed. After conviction on such a plea, is a defendant entitled to a hearing, and to relief if his factual claims are accepted, when his petition for habeas corpus alleges that his confession was in fact coerced and that it motivated his plea? We think not if he alleges and proves no more than this.[21]

First the Court argued that Richardson should have contested his guilt and the admissability of his confession at trial, and that bypassing that avenue of relief and later asserting in a petition for collateral relief that a coerced confession induced the plea "is at most a claim that the admissibility of [the] confession was mistakenly assessed. . . ."[22] Such a claim is insufficient to render the guilty plea vulnerable, since the requirement that a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective inspection in a post-conviction hearing.

This contention of the Court can be criticized on the ground that, as in *Fay v. Noia*,[23] Richardson did not really have a choice between fair options. He could have pleaded guilty to a lesser charge or stood trial and

[20] It is important to note that the events of the Richardson case occurred before *Jackson v. Denno*, 378 U.S. 368 (1964), which held that the New York procedure for determining the voluntariness of a confession violated the due process clause of the fourteenth amendment. Under the New York procedure the trial judge made a preliminary examination as to the voluntariness of a confession and excluded it if in no circumstances the confession could be deemed voluntary. However, the ultimate determination of its voluntary character as well as its truthfulness was left to the trial jury if the evidence presented a fair question as to its voluntariness. This method was held to violate due process of law because of the danger that matters pertaining to defendant's guilt would infect the jury's findings of fact bearing upon voluntariness of a confession, as well as its conclusion upon the issue of guilt itself.

Thus if Richardson had decided to stand trial and contest the validity of his confession, he would have been faced with the dilemma of submitting to a procedure for determining the voluntariness of his confession which was later declared invalid by the Supreme Court.

This point was not discussed in the opinion of the court of appeals. It was, however, discussed in the briefs of the petitioners and respondents.

[21] McMann v. Richardson, 397 U.S. 759, 766-768.

[22] *Id.* at 769.

[23] In *Fay v. Noia* the Court held that a habeas applicant had not waived his right to challenge a coerced confession simply because he failed to raise that claim by an available state remedy. There was no waiver in Noia's case because he had no choice between fair options. On the one hand he could "sit content with life imprisonment"; on the other, he could "travel the uncertain avenue of appeal which, if successful, might well have led to a retrial and death sentence." 372 U.S. 391, 440 (1963).

contested the admissibility of his confession. However, the latter was not really a viable alternative, since the method of suppressing the confession was found to be unconstitutional in *Jackson v. Denno*.[24] Furthermore, the apparently ineffective assistance of counsel given Richardson would have made the choice to stand trial even less acceptable.

The second point made by Mr. Justice White in writing the opinion for the Court was that a defendant's plea of guilty based on reasonably competent advice and counsel is an intelligent plea not open to attack on the grounds that counsel may have misjudged the admissibility of the defendant's confession.[25]

Mr. Justice Brennen pointed out the shortcomings of such a rule in his dissent. In his opinion, the Court abrubtly foreclosed any inquiry concerning the impact of an allegedly coerced confession by decreeing that the assistance of "reasonably competent" counsel insulates a defendant from the effects of a prior illegal confession. The Court, however, tacitly conceded that the absolute rigor of its new rule must be adjusted to accommodate cases such as *Chambers v. Florida*.[26] The four defendants in that case confessed. Three of them subsequently pleaded guilty, while the fourth pleaded not guilty and was tried before a jury. Each of the defendants was represented by counsel, and each stated during the trial that he had confessed and was testifying voluntarily. Notwithstanding this testimony in open court, the proffering of guilty pleas, and representation by counsel, both the state courts and the Supreme Court permitted a collateral attack upon the judgments of conviction entered on the guilty pleas.

In explication of *Chambers*, the Court noted that the coercive circumstances which compelled the confessions may "have an abiding impact and also taint the plea." According to Justice Brennen, the Court would apparently permit a defendant who was represented by counsel to attack his conviction collaterally if he could demonstrate that coercive pressures were brought to bear upon him at the very moment he was called to plead:

> This position is certainly unexceptional. I cannot agree, however, that the pleading process is constitutionally adequate despite a coerced confession merely because the coercive pressures which compelled the confession ceased prior to the entry of the plea. In short, the 'abiding impact' of the coerced confession may continue to prejudice a defendant's case or unfairly influence his decisions regarding his legal alternatives.
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> Moreover, our approach in *Pennsylvania ex rel. Herman v. Claudy*, 350 U.S. 116 (1956), is inconsistent with the absolute rule that the Court adopts today. We there considered whether, under all the circumstances of the case, the pressures brought to bear on the defendant by the State, including the extraction of a coerced confession, were sufficient to render his guilty plea involuntary. While the fact that the defendant was not

[24] *Supra*, note 20.

[25] McMann v. Richardson, 397 U.S. 759, 770.

[26] 309 U.S. 227 (1940).

> assisted by counsel was given considerable weight in determining involuntariness, it was hardly the sole critical consideration. Thus the Court's attempt to distinguish *Claudy* on the basis of counsel's assistance alone is unpersuasive. I would continue to adhere to the approach adopted in *Chambers* and *Claudy* and take into account all of the circumstances surrounding the entry of a plea rather than attach talismanic significance to the presence of counsel.[27]

Furthermore, the majority seemed to be assuming that Richardson had been given "reasonably competent advice" by counsel. This assumption is unwarranted on the basis of the allegations made by Richardson in his habeas petition. He claimed that he met with counsel only ten minutes prior to the day the plea of guilty was taken, and he advised his attorney that he did not want to plead guilty to something he did not do. His attorney then advised him to plead guilty to avoid the electric chair and told him that he could later explain how the confession was coerced by writ of habeas corpus. This could hardly be what the Court had in mind by "reasonably competent advice."

Even if Richardson had the assistance of competent counsel, the Court's argument that this would have insulated him from the effects of the coerced confession is unfounded. There is nothing any counsel, no matter how competent, could have done to remove the threat imposed by the unconstitutional scheme for determining the validity of an allegedly coerced confession.

Finally, the Court argued that the fact that the guilty plea was entered by Richardson prior to *Jackson v. Denno* was irrelevant, since ". . . the question of the validity of the plea remains the same: was the plea a voluntary and intelligent act of the defendant?"[28] Although *Jackson* has been applied retroactively, the majority felt that the defendant who pleaded guilty is in a different posture than the one who submitted to the unconstitutional procedure at trial. He was convicted on his counselled admission in open court that he commited the crime charged against him. The prior confession was not the basis for the judgment. Whether the advice the defendant received would have been different had *Jackson* then been the law has no bearing on the accuracy of the defendant's admission that he committed the crime.

This argument overlooks one very important point, namely the reason the defendant pleaded guilty. It is true that the confession was not the basis for the judgment, but it was alleged to be the basis for the guilty plea. Thus the plea was tainted by the confession and by the fact that no constitutionally adequate procedures existed to test the validity of the highly prejudicial and allegedly coerced confession. There is no basis in logic for limiting *Jackson* to situations in which the confession was introduced at

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[27] McMann v. Richardson, 397 U.S. 759, 778.

[28] *Id.* at 772.

trial and excluding it in the case of guilty pleas. The harm is just as great to the defendant in either case.

It appears that the Supreme Court has regretably cut down the scope of the habeas corpus remedy in its decision in *McMann v. Richardson*, and it has ignored the basic principle enunciated in *Pennsylvania ex rel. Herman v. Claudy*, that "a conviction following trial or on a plea of guilty based on a confession extorted by violence or by mental coercion is invalid under the Federal Due Process Clause. . . ."[29] The reasoning of the Court is susceptible to valid criticism on the points discussed above. It should also be pointed out that the only issue involved in the *Richardson* case was whether Richardson was entitled to a hearing on his claim that the allegedly coerced confession induced him to plead guilty. The use of a coerced confession to secure a guilty plea is neither a reliable method of ascertaining guilt nor acceptable to a civilized society. In keeping with the policy of discouraging illegal practices by law enforcement authorities, it would seem to make more sense to at least allow a habeas petitioner a hearing in which he could show that his guilty plea was involuntary because it was induced by a coerced confession. This is especially true in a case like Richardson's since he had no constitutionally valid way to contest the validity of his confession at the time of his plea.

Although the total impact of *Richardson* is difficult to determine at this early date, there promises to be much litigation concerning the possible ramifications of the decision. First of all, it appears that every time a habeas petitioner alleges that he was induced to plead guilty because of a coerced confession, the court must look to see if the petitioner had the effective assistance of competent counsel. This arises from the Court's holding that the defendant is insulated from the effects of a coerced confession by the "reasonably competent advice" of counsel. Thus, in each case a petitioner alleges that a coerced confession infected his guilty plea so as to make it an involuntary act, the court must examine the relationship between attorney and client to see if the attorney advised the client in a reasonably competent manner. Otherwise, the fact that the habeas petitioner had counsel would still not negate the influence of the illegally obtained confession, and its "abiding impact" would taint the guilty plea.

Determining whether a petitioner had the effective assistance of counsel is an extremely difficult task, and one which the courts may be reluctant to undertake.[30] That problem could be avoided by allowing the habeas peti-

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[29] 350 U.S. 116, 118 (1956).

[30] "Although the Supreme Court has made it clear that the sixth amendment requires effective assistance of counsel, it has been left to the lower federal courts to establish standards of trial attorney effectiveness. . . . [Judges] may . . . see that allegations of ineffective counsel constitute a direct attack on the attorney's professional stature and on the profession itself; as members of that profession, judges are naturally reluctant to be too critical of it or of its members." Comment, *Federal Habeas Corpus—A Hindsight View of Trial Attorney Effectiveness*, 27 LA. L. REV. 784 at 785.

tioner to bear the burden of showing that his guilty plea was infected by a coerced confession. The petitioner would have to show that the confession was coerced and that he had a justifiable reason for failing to challenge the validity of that confession.[31] However, it appears that *Richardson* has left the courts no choice but to second-guess the attorney who advised the habeas petitioner in a situation like *Richardson.*

Secondly, it appears that *Richardson* has at least partially undercut *Jackson v. Denno*, since the Court held that *Jackson* applies only to cases where the defendant contested the allegedly coerced confession at a trial and not to cases where the confession induced a defendant to plead guilty. As discussed previously, there is no logical reason to make such a distinction. The harm to the defendant is no less real in the situation where he pleads guilty because he has no constitutionally acceptable method of contesting the admissibility of the confession. *Jackson* has been held to be retroactive, at least in the sense that it requires hearings to determine the voluntariness of pre-*Jackson* confessions which were introduced at trial.[32] There is even more reason to grant a hearing to determine the voluntariness of a confession which leads to a guilty plea. When there was a pre-*Jackson* trial, there was only the danger that the defendant would be convicted because the jury was unduly influenced by the fact that it also considered the question of the voluntariness of the confession. There may have been many cases where no such undue influence occurred. However, when a defendant pleaded guilty because of the coerced confession and his inability to effectively contest it, there was not merely the danger that the coerced confession would result in a conviction—it was a certainty. This makes the retroactive application of *Jackson* even more justified in the case of guilty pleas tainted by involuntary confessions.

Thirdly, the *Richardson* case may have resurrected an archaic pleading barrier to habeas petitions. It is true that the habeas statute places great emphasis on pleadings, and a petitioner must allege the particular facts which entitle him to relief.[33] Here Richardson included in a supplemental affidavit the fact that his confession was beaten out of him, that his attorney met with him only ten minutes prior to the day the plea of guilty was taken, and similar facts, which, if proven, should have entitled him to relief. However, the Court said that if the petitioner alleges that his confession was in fact coerced and that it motivated his plea, that is insufficient to entitle him to a hearing.

The Court of Appeals for the Second Circuit held that Richardson had pleaded facts and not merely allegations which were "vague, conclu-

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[31] McMann v. Richardson, 397 U.S. 759, 787.

[32] *See* Johnson v. New Jersey, 384 U.S. 719, 727-728 (1966); Tehan v. Shott, 382 U.S. 406, 416 (1966); Linkletter v. Walker, 381 U.S. 618, 639 (1965).

[33] *Supra*, notes 13-15.

sory, or palpably incredible."[34] Apparently the Supreme Court did not view Richardson's rather particular factual pleadings as sufficient. These stringent pleading requirements for a habeas petitioner have been criticized in 83 HARVRD LAW REVIEW 1038:

> Grounded on an archaic doctrine of factual pleading, these requirements contrast sharply with the policy of the Federal Rules of Civil Procedure. While the function of a civil complaint is to initiate the action and provide the defendant with notice, the allegations of an application for habeas corpus must meet a minimum level of sufficiency, and the great majority of petitioners are unable to cross this hurdle.
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> It is hard to imagine any type of proceeding where stringent pleading rules would be less appropriate than in habeas corpus. Most habeas petitioners are unrepresented by counsel, and some are illiterate. Even as to events in which he participated a prisoner may be unable to recall significant facts, and his ability to gather new information is severely handicapped by his confinement. Although a petition is not expected to present legal arguments, some understanding of the legal issues may be essential to the collection and presentation of the relevant facts. Yet the prisoner ordinarily prepares his application without the advice of counsel and with limited access to legal materials.[35]

In deciding that Richardson was not entitled to a hearing on the strength of his pleadings it appears that the Court has reinforced and possibly made more stringent the factual pleading requirement faced by a habeas petitioner. What *Richardson* may require in a habeas petition is a delicate blend of fact and law that was discarded with the advent of "notice" pleading.

In summation, *Richardson v. McMann* raises several thorny issues. It presents the possibility of necessitating court scrutiny of the effectiveness of counsel when a habeas petitioner alleges that his guilty plea was the result of a coerced confession. *Jackson v. Denno* is apparently undercut to the extent that the Court refuses to apply it to guilty pleas, and *Richardson* may be aggravating the pleading burdens faced by a habeas petitioner. These points, along with the specific holding that a petitioner is not entitled to a hearing on the assertion that his guilty plea was motivated by a coerced confession, all add up to the fact that the Court is effectively cutting down the ability of a petitioner to obtain effective relief through the writ of habeas corpus.

Joseph J. Stollar

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[34] *Supra*, note 11.

[35] *Developments in the Law—Federal Habeas Corpus*, 83 HARV. L. REV. 1038, 1174-75 (1970).